

**E N D O R S E M E N T**

STEPHEN SCANLON v. ANDREA J. CABRAL, individually and in her capacity as Sheriff of Suffolk County, SUFFOLK COUNTY, and THE CITY COUNCIL OF THE CITY OF BOSTON  
04-CV-10418-MEL

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LASKER, D.J.

Stephen Scanlon ("Scanlon") alleges that he was wrongfully terminated as a Corrections Officer and Investigator for the Suffolk County Sheriff's Department without adequate pre-termination or post-termination hearings. Defendants Suffolk County and the City Council of the City of Boston ("City of Boston") move to dismiss the counts of the Complaint against them. Scanlon consents to the elimination of Suffolk County as a party to the suit, and for the reasons outlined below, the City of Boston's motion to dismiss is GRANTED.

The City of Boston argues that the Massachusetts Acts of 1991, c. 138, §§ 362, 363 ("1991 statute") transferred supervision and control of all Suffolk County penal employees, including authority regarding appointments, transfers, terminations, and promotions, from the mayor and city council to the Sheriff. Moreover, § 363 of the 1991 statute specifically exempted the penal employees from the provisions of M.G.L. c. 35, which had previously designated the city council to conduct post-termination hearings. Therefore, the City of Boston maintains that under the 1991 statute it lacks the authority or obligation to provide the relief sought by Scanlon.

In response, Scanlon contends that the City of Boston is a proper party to the suit because under M.G.L. c. 35 §§ 51, 56, the city council is responsible for administering the post-termination hearing he requests. Scanlon asserts that although the 1991 statute transferred responsibility for guidelines governing terminations of penal employees to the Sheriff, the statute did not extinguish penal employees' property rights in continued employment. Scanlon maintains that the 1991 statute is therefore facially invalid because it purports to eliminate protections for this vested property interest in continued employment by removing penal employees from the protections of M.G.L. c. 35. As such, Scanlon argues that the 1991 statute does not apply to his termination, because it would deprive him of his property interest in continued employment. Cleveland Board of Education v. Loudermill, 470 U.S. 532, 538 (1985). According to Scanlon, due process requires that some body provide a post-termination hearing, but none has a clear statutory mandate.

Scanlon contends that the city council still retains the authority to conduct such hearings for Suffolk County employees, is the most logical candidate to provide the remedy he seeks, and is therefore an indispensable party to the suit.


The 1991 statute is legislation "adjusting the burdens and benefits of economic life" and is reviewed with a presumption of constitutionality. Correction Officers Local 419 v. Weld, 768 F.Supp. 397, 399 (D. Mass. 1991) (quoting Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 15 (1976)). The individual complaining of a due process violation bears the burden of establishing that the legislature acted arbitrarily or irrationally in enacting the allegedly offending statute. Id. As this Court has previously held, the legislature had a rational basis for enacting the 1991 statute: the desire to place all Suffolk County Sheriff's Department employees under a single statutory scheme, and to keep the Suffolk County Department in harmony with other Sheriff's departments throughout the Commonwealth. Id. Moreover, the 1991 statute did not deprive penal employees of job security and other protections, but instead reassigned supervision and control of penal employees, as well as the creation and enforcement of guidelines and procedures related to their termination, to the Sheriff. Penal employees retain protections under collective bargaining agreements, the Massachusetts Acts of 1960 c. 135, and any guidelines or regulations promulgated by the Sheriff pursuant to the 1991 statute. The 1991 statute is therefore constitutional.

To the extent that Scanlon was terminated without sufficient pre-termination and post-termination hearings, the question presented by this case is the adequacy of the procedures, guidelines, and remedies promulgated by the Sheriff subsequent to the 1991 statute. The City Council of the City of Boston is not an indispensable party to this suit because under the 1991 statute, it lacks the obligation or authority to provide the relief Scanlon seeks.

Accordingly, Suffolk County's and the City of Boston's motions to dismiss are GRANTED.

It is so ordered.

Dated: March 10, 2005  
Boston, Massachusetts

  
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/s/ Morris E. Lasker  
U.S.D.J.